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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/694,304

10/27/2003

David M. Allen

DMA-10002/36

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06/02/2006

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EXAMINER

GILBERT, WILLIAM V

ART UNIT

PAPER NUMBER

3635

DATE MAILED: 06/02/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

DETAILED ACTION

Election/Restrictions

1. Applicant's argument dated April 12, 2006 regarding Claim 12 has been found persuasive and will be rejoined for examination purposes.

Claims 14 and 15 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on April 12, 2006.

Claim Objections

2. Claim 4 is objected to because of the following informalities: Applicant states as follows: "the base portion and top portion [of the baseboard assembly] each having a generally rectangular horizontal cross section," however the Examiner is unsure as to what the Applicant is interpreting as **horizontal**. For purposes of examination, Examiner will interpret "horizontal" to be equivalent with "longitudinal". Appropriate correction is required.

Claim 10 is objected to because of the following informalities: lack of antecedent basis. Applicant states in Claim 10, line 2, "the same piece of wood..." however no prior

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reference to a piece of wood is recognized. Appropriate correction is required.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. **Claims 1, 2, 4, 5 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Carter (U.S. Patent No. 2,678,476).**

3. Regarding Claim 1, Carter discloses an assembly (4) having a base portion (see element "A" of attached Figure 3 from Carter, infra), where the upper end (see element "B" of attached Figure 3 from Carter, infra) being sloped downwardly from the front surface (see element "C" of attached Figure 3 from Carter, infra) to the back surface (see element "D" of attached Figure 3 from Carter, infra), and a top portion (see element "E" from attached Figure 3 from Carter, infra), where the lower end (see element "F" from attached Figure 3 from Carter, infra) of the top portion being sloped downwardly from the front surface (see element "G" from attached Figure 3 from Carter, infra) to the

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back surface (see element "H" from attached Figure 3 from Carter, *infra*.)

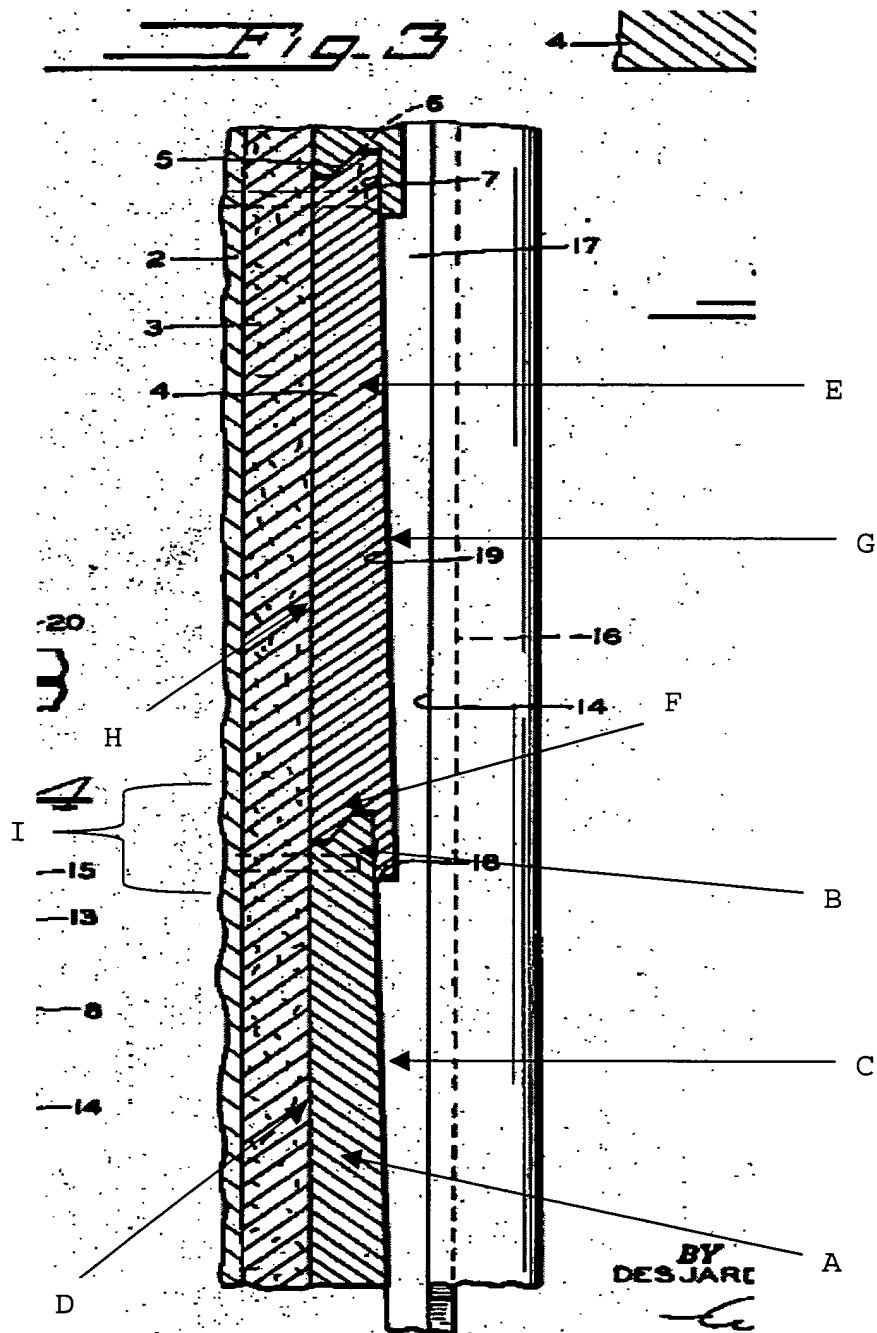


Figure 3 from Carter

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4. Regarding Claim 2, the phrase "wherein the base portion and top portion are both elongated members such that the base portion in the installed position extends along the wall adjacent to the floor," is a statement of intended use of the claimed invention and must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

5. Regarding Claim 4, Carter discloses the base portion (A, supra) and top portion (E, supra) each having a generally rectangular horizontal cross section (Figure 3, generally; see also Claim objection, supra).

6. Regarding Claim 5, Carter discloses the upper end of the base portion (B, supra) having a sloped surface that forms an angle with the front surface (C, supra) of the base portion and the lower end of the top portion (F, supra) comprises a sloped surface that forms substantially the same angle with the back surface of the top portion (H, supra). See area "I" from attached Figure 3 from Carter, supra.

7. Regarding Claim 9, Carter discloses the base portion and top portion each having a thickness measured between the back (D

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and H respectively) and front surfaces (C and G respectively) being substantially the same (Figure 3, generally).

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

9. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

10. **Claims 3, 6-8 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Carter.**

Regarding Claim 3, Carter discloses the claimed invention except that the base portion and top portion both have the same length in the elongated direction. It would have been obvious

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at the time the invention was made to a person having ordinary skill in the art to make both the top and bottom portion the same length in the elongated direction because it is well known in the art to make board assemblies the same length to maintain uniformity in production, shipping and installation.

Regarding Claim 6, Carter discloses the claimed invention except that the angles are in the range of 30 to 60 degrees. It would be obvious as a matter of design choice to make the angles in the range of 30 to 60 degrees since applicant has not disclosed that this range solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well with an angle of almost any degree.

Regarding Claim 7, Carter discloses the claimed invention except that the angles are in the range of 40 to 50 degrees. It would be obvious as a matter of design choice to make the angles in the range of 40 to 50 degrees since applicant has not disclosed that this range solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well with an angle of almost any degree.

Regarding Claim 8, Carter discloses the claimed invention except that the angles are approximately 45 degrees. It would be obvious as a matter of design choice to make the angles approximately 45 degrees since applicant has not disclosed that

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this range solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well with an angle of almost any degree.

Regarding Claim 10, Carter discloses the claimed invention except that the base portion and top portion are formed such that the grain of the top portion generally matches the grain of the base portion. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to make the grain of the base portion generally match the grain of the top portion because it is well known in the art that assemblies in this art are made from a uniform wood (i.e. the entire assembly will be made entirely from pine, entirely from cherry wood, etc.), and manufacturing the assembly that is made from the same type of wood by cutting longitudinally with the grain would inherently result in a general match of the grain.

Claims 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Trutwin et al. (U.S. Patent No. 6,202,380 B1) in view of Carter.

Regarding Claim 11, with respect to Claim 1, Trutwin discloses a baseboard assembly having a base portion (17) and a top portion (11). While Trutwin discloses the assembly being of two pieces and joined with essentially a tongue-and-groove connection, it does not disclose the upper end of the base

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portion being sloped downwardly from the front surface to the back surface nor does Trutwin disclose the lower end of the top portion being sloped downwardly from the front surface to the back surface. Carter discloses an assembly where the upper end (B, supra) being sloped downwardly from the front surface (C, supra) to the back surface (D, supra), and a top portion (E, supra), where the lower end of the top portion (F, supra) being sloped downwardly from the front surface (G, supra) to the back surface (H, supra). It would have been obvious at the time the invention was made to a person having ordinary skill in the art to make the upper end of the base portion slope downwardly from the front surface to the back surface and the lower end of the top portion sloped downwardly from the front surface to the back surface. One would have been motivated to make such a modification because the sloped surface in Carter is much easier to manufacture than the tongue-and-groove in Trutwin and it would still permit the top portion to rest properly on the base portion. Regarding Claim 11, Trutwin discloses the base portion (17) having a recess (29,30) formed where the back surface (21) meets the upper end (25).

Regarding Claim 12, Trutwin discloses the top portion (11) having a recess (13) formed where the back surface (15) meets the lower end (28).

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Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Carter as applied to claim 1 above, and further in view of Hasenwinkle (U.S. Patent No. 3,961,654).

Regarding Claim 13, Carter discloses providing a board (4) having a front surface (C, supra) and an opposed back surface (D, supra) and discloses cutting the board lengthwise at a non-perpendicular angle (see Figure 3, generally), but Carter does not disclose the board's forming the base portion and the top portion when cut. Hasenwinkle discloses cutting wood at non-perpendicular angles (see Hasenwinkle Figure 5, element 36) to form a top portion (see element "X" of attached Figure 7 from Hasenwinkle, infra; see also Column 1, lines 5-10) and a bottom portion (see element "Y" from attached Figure 7 from Hasenwinkle, infra.) It would have been obvious at the time the invention was made to a person having ordinary skill to cut the board at non-perpendicular angles as in Carter to form the base portion and top portion as shown in Hasenwinkle. One would have been motivated to make such a modification because cutting a board lengthwise to form a top and bottom portion would be more economically practical as opposed to forming a base portion by cutting one piece of wood and forming a top portion by cutting a separate piece of wood.

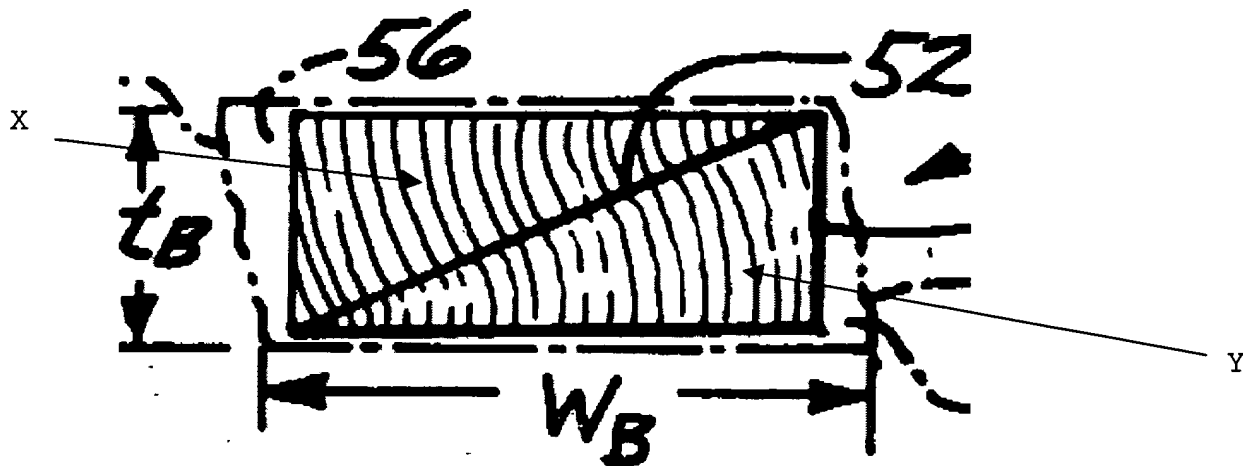


Figure 7 from Hasenwinkle

Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Dobija (U.S. Patent No. 4,008,549).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to William V. Gilbert whose telephone number is 571.272.9055. The examiner can normally be reached on Monday - Friday, 08:00 to 17:00 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl Friedman can be reached on 571.272.6842. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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